

FINDINGS OF FACT

1. The Town of Exeter is a public employer as defined by RSA 273-A:1 X.
2. The State Employees' Association of New Hampshire, Inc., is the duly certified bargaining agent of employees working in the Town's Public Works, Parks and Recreation and Town Office Departments.
3. On April 9, 1991, the parties reached tentative agreement on a successor collective bargaining agreement (CBA). The Union membership then ratified that tentative agreement on April 19, 1991. The Board of Selectmen unanimously ratified the tentative agreement on August 26, 1991.
4. On September 4, 1991, the Town posted a warrant for a Special Town Meeting to be held on October 8, 1991. One of the items on that warrant involved approval of the foregoing tentative agreement covering wages and benefits in calendar years 1991, 1992 and 1993.
5. The Town has a twenty member Budget Recommendation Committee (BRC). It met on September 16, 1991, with fifteen members present. All five members of the Selectmen are members of the BRC; only member Moyers was not present on September 16, 1991. During the BRC meeting of that date, it voted 11 against and 3 abstaining or undecided.
6. On September 18, 1991, the Selectmen conducted a public hearing to review and provide input on the warrant articles to be discussed at the Special Town Meeting on October 8, 1991. Attendees were told by the Chairman of the Board of Selectmen that they had voted unanimously to support the three year CBA for employees represented by the Union in this case. Thereafter, Selectman Roland Roy, speaking from his seat on the podium, reported that the BRC had voted 11 to 4 against the raises, that he had "serious reservations" about the raises as a private citizen, and that, as a private citizen, he did not support the raises. Roy also told the meeting that the Board of Selectmen, "although they can vote for [raises] as Selectmen, [they] have every right to vote another way as private citizens and Budget Committee members." Roy was corrected by Chairman Binette for voicing these opinions from his chair rather than from

the floor.

7. During the Special Town Meeting held October 8, 1991 each of the selectmen were asked to state their positions on the pending raises in article 3 of the warrant. Members Binette and Moyers supported; members Roy, Baillargeon and Dix opposed notwithstanding their unanimous supporting vote of August 26, 1991.
8. Voters at the Special Town meeting rejected the CBA tentative agreements by a vote of 185 to 68.

DECISION AND ORDER

This is not a case of first impression. This Board has recognized "that there is a duty to support a tentative agreement imposed on negotiating team members..... This duty, however, would be a hollow shibboleth if it did not extend to actually voting to support the tentative agreement. The potential for superficial support merely to comply with the duty...would be overwhelming. Therefore, we hold that the duty does extend to voting, violation of which is a prohibited practice, bad faith bargaining." Governor Wentworth (Decision No. 83-60, December 7, 1983). The requirement to bargain in good faith has been "interpreted by us to mean that negotiators must support the agreement that they have reached in some manner.... [T]he Union and/or employer negotiators must evidence their support for the negotiated agreement and may not under any conditions oppose the mediated or negotiated settlement." Merrimack Fire Fighters (Decision No. 85-24, April 2, 1985) In some cases, we have permitted dissident members of negotiating teams to speak against ratification or approval of a proposed CBA. Stratford Teachers (Decision No. 85-85, October 24, 1985). That protection or option cannot be afforded in this case where Selectmen unanimously approved a contract in August with a majority of them speaking and/or voting against it a month later. This conduct not only torpedoed the deal, but, if allowed to continue, would create a hostile bargaining environment in which it would be virtually impossible to achieve settlement.

Our reading of these cases, RSA 273-A:1, "Statement of Policy," and RSA 273-A:3 causes us to conclude that conduct by management negotiators was inappropriate and violative of RSA 273-A:5 I (e) and (g).

1. The Town and its agents, servants and negotiators are directed to Cease and Desist from the conduct complained of in this complaint.

2. If the parties determine to resubmit the current contract proposal to a Regular or Special Town Meeting, Selectmen must report their unanimous actions of August 26, 1991 and the reasons therefore.

So ordered.

Signed this 24th day of April, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Richard W. Roulx and Arthur Blanchette present and voting.